IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 57 OF 2005

in

APPEAL NO. 824 OF 2004

AND

APPEAL NO. 824 OF 2004

IN

CHAMBER SUMMONS NO. 333 OF 2003

IN

EXECUTION APPLICATION NO. 95 OF 2002

IN

ARBITRATION CASE NO. 26 OF 2000

Pushpa D. Shah ... Appellant
(Orig. Petitioner/
Versus Decree holder)
Smt. Santosh Sharma & Anr. ... Respondents

Ms. Alpana Ghone i/b. Harakhchand & Co. for the appellant.

Mrs. Lambay i/b. Lambay & Co. for Respondent No.2.

CORAM: D.K.DESHMUKH &

J.H.BHATIA,JJ.

DATE : 13th August, 2007.

P.C.

1. Though there is delay in filing the Appeal, we heard learned Counsel for the appellant on merits of the Appeal.

2. By the order impugned in the Appeal, the learned Single Judge cancelled the Warrant of Sale issued in relation to the property bearing Gala No.404, situated in Hiren Light Industrial Premises Co-operative Society Ltd., 408, Moghul Lane, Mahim, Bombay 400 016. The property was attached and was ordered to be sold on the assumption that Smt. Santosh Sharma, the judgment debtor, is the owner of the property. The Chamber Summons was taken out by Bhagwant Kaur claiming to be the owner of the property. The Court, on finding that the decree-holder cannot show that the judgment debtor is the owner of the property, made the order which is impugned in the Appeal.

3. The learned Counsel appearing for the appellant submits that the applicant, who had taken out the Chamber Summons, was not the owner of the property. In our opinion, whether the applicant, who had taken out the Chamber Summons, was the owner of the property or

not, is a secondary aspect. The first and primary aspect is does the decree-holder prove to the satisfaction of the Court that the judgment debtor against whom the Execution Application is taken out is the owner of the property? When we asked the learned Counsel to produce the documents of title which will show that the judgment debtor - Smt. Santosh Sharma is the owner of the property, she fairly stated that the decree-holder does not have any document to show that Smt. Santosh Sharma, who is the judgment debtor, is the owner of the property.

4. In this view of the matter, in our opinion, no exception can be taken to the order which is impugned in the appeal.

The Motion and the Appeal are disposed of.

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(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)